

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SCOTT BRUMETT,

Petitioner,

v.

ANTHONY KANE,

Respondent,

and BOARD OF PRISON TERMS and
ARNOLD SCHWARZENEGGER, Governor,
Real Parties in Interest,

No. C 04-05423 JSW

**ORDER TO SHOW CAUSE AND
DENYING MOTION TO DISMISS
AS MOOT**

On June 2, 2005, Respondent filed a motion to dismiss the petition for writ of habeas corpus filed in this case on December 23, 2004. On July 5, 2005, Petitioner filed his first amended petition in apparent response to Respondent's motion.

In his amended petition, Petitioner again seeks federal habeas corpus relief by claiming the California Board of Prison Terms ("the Board") has violated the Due Process Clause of the 14th Amendment to the United States Constitution by its repeated denials of parole to Petitioner; and that the Board has violated the Equal Protection Clause of the 14th Amendment to the United States Constitution by its repeated denials of parole to Petitioner. Liberally construed, the claims appear potentially colorable under 28 U.S.C. § 2254 and merit an answer from Respondents.

Accordingly, for the foregoing reasons and for good cause shown:

1. Petitioner shall serve by certified mail a copy of this Order and the amended petition and all attachments thereto upon Respondents.

2. Respondents shall file with the Court and serve on Petitioner, within 60 days of the date of this Order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondents shall file with the answer and serve on Petitioner a copy of all portions of the administrative record that are relevant to a determination of the issues presented by the petition.
3. If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on Respondents within 30 days of his receipt of the answer.

In light of the filing of the amended petition, the motion to dismiss is DENIED AS MOOT.

IT IS SO ORDERED.

Dated: August 26, 2005


JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE